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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JEAN-SEBASTIEN LESSARD, MATHIEU BOISCLAIR, and  
FREDERIC SIMARD-FOURNIER

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Appeal 2008-005157  
Application 09/931,896  
Technology Center 2400

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Decided:<sup>1</sup> July 21, 2009

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Before JAMES D. THOMAS, JOHN A. JEFFERY, and THU A. DANG,  
*Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-26. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

## STATEMENT OF THE CASE

Appellants' invention enables users of computing devices to create, access, and share geographical positioning data and related information, preferably in real time. Specifically, the invention involves (1) determining the geographical position of the location using a user device; (2) identifying or creating additional data elements associated to the location; (3) creating a record comprising the position and the additional data elements using a user device; and (4) transmitting the record from the user device to a data server for storage. As such, users can integrate the use of location bookmarks in various applications.<sup>2</sup>

Claim 12 is illustrative:

12. A method allowing an end user to create and store information concerning a location, said method using a system comprising a data server, at least a user device and a data communication network, said method comprising the steps of:

- a. determining the geographical position of the location using said user device;
- b. identifying or creating additional data elements associated to said location;
- c. creating a record comprising said position and said additional data elements using said user device;
- d. transmitting said record from said user device to said data server using said data communication network;
- e. storing said record in said data server.

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<sup>2</sup> See generally Abstract; Spec. 7-12.

The Examiner relies on the following as evidence of unpatentability:

Camhi	US 5,825,283	Oct. 20, 1998
Kitano	US 5,926,116	July 20, 1999
Dussell	US 5,938,721	Aug. 17, 1999
Giniger	US 6,199,045 B1	Mar. 6, 2001

1. The Examiner rejected claims 1, 2, 4, 6, 9, and 12-26 under 35 U.S.C. § 103(a) as unpatentable over Giniger and Dussell. Ans. 3-16.
2. The Examiner rejected claims 3 and 10 under 35 U.S.C. § 103(a) as unpatentable over Giniger, Dussell, and Kitano. Ans. 16-18.
3. The Examiner rejected claims 5 and 11 under 35 U.S.C. § 103(a) as unpatentable over Giniger, Dussell, Kitano, and Camhi. Ans. 18-19.
4. The Examiner rejected claims 7 and 8 under 35 U.S.C. § 103(a) as unpatentable over Giniger, Dussell, and Camhi. Ans. 19-20.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Brief and the Answer<sup>3</sup> for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

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<sup>3</sup> Throughout this opinion, we refer to the Appeal Brief filed August 27, 2007 and the Examiner's Answer mailed October 16, 2007.

THE OBVIOUSNESS REJECTION OVER GINIGER AND DUSSELL

Regarding representative claim 12,<sup>4</sup> the Examiner finds that Giniger discloses a method for allowing an end user to create and store information concerning a location with all the recited steps except for creating a record comprising the position and additional data elements using a user device. The Examiner, however, relies on Dussell for this feature in concluding the claim would have been obvious. Ans. 8-9. *See also* Ans. 23 (noting that Dussell teaches a location bookmark).

Appellants argue that, unlike the claimed invention, Giniger does not allow the user of the mobile device to *create* personalized location bookmarks related to selected locations, but rather merely allows the user to *retrieve* location-based information from a server. Br. 12-15.

Appellants further contend that Dussell's position-based task reminder system does not teach or suggest creating location bookmarks that refer to specific and precise location coordinates, but rather merely allows users to associate a task with a generic location descriptor. Br. 16-17. In any event, Appellants emphasize that the user in Dussell does not associate a task when the user is at the specific location as would be the case with the location bookmark system of the claimed invention. Rather, Appellants contend, the user in Dussell associates a task with a previously-known location. Br. 17-18.

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<sup>4</sup> Appellants argue claims 1, 2, 4, 6, 9, and 12-26 together as a group (*see* Br. 11-19), but present additional arguments for method claims 12, 17, and 26. *See* Br. 17. Accordingly, we select claim 12 as representative of the group comprising claims 1, 2, 4, 6, 9, and 12-26. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The issue before us, then, is as follows:

#### ISSUE

Have Appellants shown that the Examiner erred in rejecting claim 12 by finding that Giniger and Dussell collectively teach or suggest allowing an end user to create and store information concerning a location including:

- (1) determining the geographical position of the location using a user device;
- (2) identifying or creating additional data elements associated to the location;
- (3) creating a record comprising the position and the additional data elements using the user device; and
- (4) transmitting the record from the user device to a data server for storage?

#### FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence:

##### *Giniger*

1. Giniger discloses a system that provides position-related information to a mobile user. In one embodiment, a mobile unit 103 derives its present geographical location by processing signals from GPS satellites 109. The position information identifies the mobile unit as being located within a particular geographical area (labelled A1 to C3). The mobile unit

then transmits the present location information to central site server 107 via a sequence of DTMF tones. Giniger, col. 8, ll. 15-60; col. 12, ll. 5-15; Figs. 1 and 3A (steps 310 and 311).

2. After obtaining the information type and position information, central site server 107 (1) converts the received information into a digital format; (2) stores the converted position information into a data record associated with the mobile unit 103; (3) selects the appropriate subset of information 203 from a selection/position table 201; and (4) transmits this selected information subset to the mobile unit. Giniger, col. 8, ll. 60-65; col. 12, ll. 20-24 and 32-47; Figs. 1, 2, and 3A (steps 312-314).

#### *Dussell*

3. Dussell discloses a computer-assisted task scheduling system that allows a user to store a task description in a database 10 accessible by a mobile computer system 20 (e.g., a personal digital assistant, notebook computer, personal computer, etc.). Specifically, the mobile computer system receives positioning information corresponding to its geographic location from location determination unit 30 and indexes the database based on the positioning information when the information indicates that the mobile computer system is in a geographic location that facilitates completion of a task associated with the task description. Dussell, col. 1, ll. 58-67; col. 3, ll. 27-39; Fig. 1.

4. In one embodiment, the mobile computer system is transported to a first location having first geographic coordinates at a first time. These geographic coordinates are associated with a descriptor indicative of the first location in a database associated with the mobile computer system so as to

form a geocoded entry in the database and an associated task to be accomplished. The mobile computer system is then transported to a second location at a second time and the second location's geographic coordinates are analyzed to determine whether the mobile computer system is within a predetermined range of the first location. If so, the user is alerted regarding the associated task to be accomplished. Dussell, col. 2, ll. 12-36.

5. Tasks are assigned using a task descriptor (e.g., a text and/or voice message describing the task) and stored in database 10. Dussell, col. 7, ll. 24-26; Fig. 1.

6. The task descriptor typically includes a reference indicating a location where the task is to be accomplished. This may be a set of geographic coordinates or, more typically, a name of a business or other location. For example, if the task descriptor is a text message such as "PICK UP MILK," an appropriate reference might be "GROCERY STORE." Dussell, col. 7, ll. 26-32.

7. Figure 2 illustrates an example where a vehicle 100 reaches a location 102 that is located within a predetermined distance "R" from a "GROCERY STORE" 104. Assuming that the user has previously stored a "PICK UP MILK" task with a reference to the "GROCERY STORE," this task will be retrieved from the database and the user will be alerted to "PICK UP MILK." Dussell, col. 7, ll. 33-40; col. 8, ll. 52-58; Fig. 2.

8. After entering the task description in the database, the user will transport mobile computer system 20 such that it is able to (1) access the database, and (2) receive position information from location determination unit 30. Dussell, col. 7, ll. 42-51; Fig. 1.



9. Location determination unit 30 receives and processes GPS signals and provides geographic location coordinates (e.g., latitude, longitude, and altitude) to mobile computer system 20 via interface 38. Dussell, col. 8, ll. 12-26; col. 6, l. 60 – col. 7, l. 12; Fig. 1.

10. Once mobile computer system 20 receives the geographic location coordinates, microprocessor uses this information to index database 10 and retrieve task descriptions having associated geocodes that are close in proximity to the mobile computer system's current geographic location. Dussell, col. 8, ll. 45-58; Figs. 1 and 2.

11. Database 10 is programmed by the user of the mobile computer system 20. Dussell, col. 9, ll. 3 and 4.

#### *Appellants' Disclosure*

12. “[A] Location Bookmark (‘LBK’) pertains to data associated with places, physical objects and events that the mobile user may encounter or consider visiting. . . .” Spec. 7:7-8.

13. “[A] LBK is a data object that corresponds to a place, a physical object or an event located on earth through a coordinates system . . . and [comprises] embedded multimedia information (text, image, audio, video) as well as links to external resources (web sites, web services, databases, etc.).” Spec. 7:12-16.

#### PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so

doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966) (noting that 35 U.S.C. § 103 leads to three basic factual inquiries: (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art). Furthermore, the Examiner's obviousness rejection must be based on

“some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness” . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

*KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

If the Examiner's burden is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

## ANALYSIS

Based on the record before us, we are not persuaded of error in the Examiner's obviousness rejection of representative claim 12. We note at the outset that, as a general proposition, merely reciting information “concerning a location” and data elements that are “associated to” the location essentially constitutes non-functional descriptive material as it does not further limit the

claimed invention either functionally or structurally. Such non-functional descriptive material does not patentably distinguish over prior art that otherwise renders the claims unpatentable.<sup>5</sup>

Turning to the prior art, we agree with Appellants (Br. 12-15) that while Giniger's system enables the user to *retrieve* location-based information from a server based on derived geographical location information that is sent to the server (FF 1 and 2), it does not explicitly teach that the user can (1) create a record with the user device comprising the user device's geographical position and additional data elements, and (2) transmit that record to a server for storage. *See id.* The Examiner, however, did not rely on Giniger for this teaching. Rather, the Examiner relied on Dussell for this feature. *See* Ans. 21 and 23.

We agree with the Examiner that Dussell reasonably suggests that a user device can (1) create a record comprising the user device's determined geographical position and additional data elements, and (2) transmit that record to a server for storage. Although Dussell's system retrieves previously-stored locations and associated task descriptors from a database to alert the user when the mobile computer system is within a predetermined range (FF 7 and 10) as Appellants argue (Br. 17-18), it is the *user* that actually creates these associations in the first instance, namely by programming the database. *See* FF 11.

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<sup>5</sup> *See In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004); *see also Ex parte Nehls*, 88 USPQ2d 1883, 1887-89 (precedential) (discussing cases pertaining to non-functional descriptive material).

To this end, Dussell explains that the mobile computer system is initially transported to a first location to associate the first location's geographic coordinates with an associated task descriptor in a database. FF 4. As a result, the user forms a geocoded entry in the database and an associated task to be accomplished. *Id.* When the mobile computer system is later moved to a second location, the second location's geographic coordinates are analyzed to determine whether the mobile computer system is within a predetermined range of the first location. If so, the user is alerted regarding the associated task to be accomplished. *Id.*

The clear import of this discussion is that when the user in Dussell is at the first location, the user creates a record comprising (1) the location of the mobile computer system (i.e., its geographic coordinates (FF 6)), and (2) additional data elements associated to this location (i.e., the associated task descriptor (FF 5)). Nevertheless, even assuming, without deciding, that the task descriptor was already stored in the database prior to arriving at the first location to acquire its coordinates (a finding we do not reach), we see no reason why the task description could not be created at the first location and sent to the database along with the coordinates as a single record at that time.

Appellants have provided no evidence on this record that Dussell's mobile computer system 20 would be incapable of creating such a record. In any event, the fact that Dussell emphasizes that the user uses the mobile computer to program the database (*see* FF 3 and 11) only bolsters our conclusion that such creating such a record with the mobile computer would have been an obvious way to program the database.

Appellants' argument regarding Dussell's location reference being a mere generic descriptor and not a specific and precise set of coordinates as in a location bookmark (Br. 16-17) is unavailing. Although Dussell does indicate that a particular location is "more typically" referenced with a name (e.g., a business name or other location name such as "GROCERY STORE") (FF 6), the location reference is hardly limited to these names. Rather, the reference can also be a set of geographic coordinates. *Id.* Notably, these coordinates are derived from GPS signals from the location determination unit and can include latitude, longitude, and altitude. FF 9. Certainly, such coordinates identify a specific location and, along with the additional data that is associated with these locations, reasonably comports with a "location bookmark" in light of the Specification.<sup>6</sup> See FF 12 and 13.

Lastly, while we find the Examiner's reliance on Giniger merely cumulative to the teachings of Dussell, we nonetheless find no error in the Examiner's combining the teachings of Dussell with Giniger to arrive at the claimed invention. Since Dussell teaches creating a record comprising the geographic position and additional data elements associated to a location that is sent to a database for storage, we see no reason why Giniger could not be modified to include such a feature, particularly since the mobile unit sends geographic location information to a server for storage. See FF 1 and

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<sup>6</sup> In any event, the term "location bookmark" is not even recited in claim 12, and Appellants' arguments concerning such a bookmark are not commensurate with the scope of claim 12. But even if it did, we agree with the Examiner (Ans. 23) that Dussell teaches or suggests such a feature for the reasons noted previously.

2. The Examiner's combination of references is therefore supported by articulated reasoning with some rational underpinning to justify the Examiner's obviousness conclusion. *See KSR*, 550 U.S. at 418.

For the foregoing reasons, Appellants have not persuaded us of error in the Examiner's rejection of representative claim 12. Therefore, we will sustain the Examiner's rejection of that claim, and claims 1, 2, 4, 6, 9, and 13-26 which fall with claim 1.

#### THE OTHER REJECTIONS

Likewise, we will sustain the Examiner's obviousness rejections of (1) claims 3 and 10 over Giniger, Dussell, and Kitano (Ans. 16-18); (2) claims 5 and 11 over Giniger, Dussell, Kitano, and Camhi (Ans. 18-19); and (3) claims 7 and 8 over Giniger, Dussell, and Camhi (Ans. 19-20). Appellants have not particularly pointed out errors in the Examiner's reasoning to persuasively rebut the Examiner's *prima facie* case of obviousness, but merely indicate that the claims are patentable for the same reasons previously discussed with respect to claims 1, 2, 4, 6, 9, and 12-26. Br. 19-20. Thus, we are not persuaded that the Examiner's obviousness rejections are in error for the same reasons discussed above. The rejections are therefore sustained.

#### CONCLUSION

Appellants have not shown that the Examiner erred in rejecting claims 1-26 under § 103.

ORDER

The Examiner's decision rejecting claims 1-26 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

pgc

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